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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,313	04/25/2000	Amit D. Agarwal	249768020US1	9641

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EXAMINER

JAKETIC, BRYAN J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 06/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/558,313

Applicant(s)

AGARWAL, AMIT D.

Examiner

Bryan Jaketic

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-26, 36-38, and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney. Kenney discloses a method in a data processing system for automatically initiating the replenishment of a consumable product comprising:
receiving an order for a customer and filling that order on a first date and estimating a target date for suggesting replenishment (col. 11, lines 12-34). The user is provided with an indication that the product should be replenished (see Figures 5 and 7 and col. 12, lines 50-54). The consumer then requests replenishment of the product by performing a single interaction, and the product is ordered (Fig. 10A). The target date is estimated based on the first date and the average life span of the item, which in turn is determined by the length of intervals between purchases (col. 11, lines 26-34). It is inherent that Kenney employs a computer memory and a computer-readable medium containing instructions for carrying out the method.

Kenney does not disclose the date on which the system provides the indication to the consumer. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an indication to the consumer on or before the target date, so the consumer will not run out of the item.

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The items being sold in Kenney are physical articles. However, the type of item being sold does not alter how the system functions. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the system of Kenney to sell any type of item because the type of item does not patentably distinguish the claimed invention.

Kenney does not teach the step of determining a target date based on availability of an item. However, it is common in the art to only suggest the purchase of an item if that item is in stock. It therefore would have been obvious to one of ordinary skill in the art at the time the invention was made to use the availability of the item to determine a target date so that the indication is sent only if the item is available.

Kenney does not teach the step of determining a target date based on the size of the item. However, it is commonly known in the art that the size of an item will impact the length of time it takes to consume. It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine a target date based on the size of the item, so that a more accurate date is determined.

Kenney does not teach the step of determining a target date base on an expiration date. However, it is commonly known in the art that items need to be replaced after they expire. It would have been obvious to one of ordinary skill in the art

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at the time the invention was made to employ to determine a target date based on an expiration date so that a customer will replace expired items.

3. Claims 27-35 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney in view of Feinleib. Kenney discloses all of the limitations of the claims except for the step of scheduling for a time for transmission of a unilateral transmission indicating that the item should be purchased. Feinleib discloses a reminder system that sends email reminders at a specified time prior to an event occurrence. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the reminder system of Feinleib with the invention of Kenney to send timely reminders to users via email, voice mail, or instant message, regardless of whether they are engaged in electronic shopping, to ensure that customers are aware of an upcoming event.

4. Claims 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney in view of Manchala et al. Kenney discloses all of the limitations of the claims, except for a teaching that the product is automatically ordered. Manchala et al disclose a method for automatically re-ordering needed supplies (col. 3, lines 31-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teachings of Manchala et al with the invention of Kenney to ensure that products are ordered in a timely fashion.

5. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney in view of Hartman et al. Kenney discloses all of the limitations of the claim except for a teaching of requesting replenishment with a single mouse click. Hartman et al disclose

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a system for placing an order with a single mouse click. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teachings of Hartman et al with the invention of Kenney, because single-click ordering is simple and fast.

Response to Arguments

6. Applicant's arguments with respect to claims 27-35, 39, and 40 have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's arguments with respect to claims 1-26, 36-38, and 41-43 have been considered but are not persuasive. Applicant argues that Kenney fails to disclose "a control usable by the consumer to request replenishment of the product by performing a single interaction." Examiner respectfully disagrees. Webster's Collegiate Dictionary defines "interaction" as a "mutual or reciprocal action or influence." Under this definition, a single visit to a web site would be considered a "single interaction" regardless of how long the visit lasts or how many times the user clicks his mouse. Kenney discloses a step of reordering merchandise during a single web site visit, and therefore teaches a step of reordering merchandise by performing a single interaction.

Applicant also argues that Kenney does not teach, "on the target date, providing to the consumer an indication that the first item should be replenished." Examiner respectfully disagrees. Kenney teaches the step of providing an indication that an item should be replenished when the consumer visits the web site. If the consumer visits the web site on the target date, he will be notified on the target date.

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Applicant also argues that Kenney does not disclose entries comprising "an identification of a consumer, an identification of an item, and an indication of a target date on which the replenishment of the item is to be processed." Examiner respectfully disagrees. It is inherent that Kenney employ a memory containing an item replenishment data structure, wherein each data structure comprises a plurality of consumer orders (entries), and each consumer order comprises an identification of a consumer, an identification of at least one item, and an indication of a target date for each item.

Applicant also argues that Kenney does not disclose the step of raising an event. Examiner maintains that it is inherent that an event is raised when the condition is satisfied for notifying the consumer.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brown et al and Elliott disclose methods of automatically re-ordering items. Li et al, Vance et al, Ensel et al, and Tobin disclose methods of providing email notification to users.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Jaketic whose telephone number is (703) 308-0134. The examiner can normally be reached on Monday through Friday (9:00-5:30).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Rice can be reached on (703) 308-3495. The fax phone numbers for

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the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

bj
April 21, 2003


4/21/03